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Thomas T. Gammage.

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Recommended Citation

H.R. Rep. No. 750, 30th Cong., 1st Sess. (1848)

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Report No. 750.

[To accompany bill H. R. No. 589.]

HOUSE OF REPRESENTATIVES.

THOMAS T. GAMMAGE.

JULY 12, 1848.

Mr. DUNN, from the Committee of Claims, made the following

REPORT :

The Committee of Claims, to whom was referred the petition of Thomas T. Gammage, have examined the same, and report:

That certain goods and merchandise belonging to the petitioner was seized or impressed for the use of the troops called out in 1836, to suppress Indian insurrection, under the command of General Irwin. A schedule of the articles so taken is printed herewith, together with the certificate of the quartermaster, that they were so taken and were necessary for the troops, and the certificate of General Irwin to the same effect, and showing further that the seizure was by virtue of his official order; that the schedule is correct; and the prices of the articles as therein stated just and reasonable, and had not been paid to the petitioner. The claim was at first presented to the proper department for settlement; but upon examination, the claim being not for *purchased* supplies, but for *impressed* supplies, under an opinion of the attorney general payment was refused, because there was no law authorizing it, and the petitioner was referred to Congress for relief.

The committee think the claim should be paid, and report a bill accordingly. The evidence is herewith reported.

A schedule of articles for the subsistence of the volunteers in the United States service under command of Major General William Irwin, during the war with the Creek Indians, in the year 1836, taken from Thomas T. Gammage by his orders, May, 1836.

5 dozen large coffee pots, \$1 each.....	\$60 00
1,155 yards 6-quarter sheeting for tent cloth, at 25 cents	276 25
Thread and needles for do and wafers	4 50
75 8-quarter double blankets (Mackinaw) \$3 each....	225 00
2 dozen large size wire sieves, \$1 each.....	24 00
6 yards fine calico for surgeon, for sick, 50 cents ...	3 00
2 painted chamber pots (for the sick) \$1.....	2 00
1 large size keg of lard, at.....	15 00
400 pounds castings, 10 cents.....	40 00
2 rifles, at \$18 each	36 00
5 large size bakers, \$1 25 each.....	6 25
24 large size coffee mills, \$2 each.....	48 00
2 dozen half-gallon tin pans, \$1 each	24 00
4 glass ink-stands, 50 cents each	2 00
6 rifle guns, at \$15 each	90 00
4 reams of paper for making cartridges, \$5	20 00
4 shot-guns of a good quality, \$22 each.....	88 00
14 sets of knives and forks, at \$2 12½ per set.....	30 00
Amount	994 00

THE STATE OF ALABAMA, }
Tuscaloosa County. }

Personally appeared before me, William R. Smith, a justice of the peace in and for said county, Thomas T. Gammage, after being duly sworn, deposeth and says, that an account presented to this legislature in favor of him for nine hundred and ninety-four dollars, against the State, for payment, is just and true in all respects, and that the articles charged for was delivered to said troop, under the command of Major General Wm. Irwin, and that he has never received payment for the same or any part thereof, by himself or agent, in any way whatever.

Sworn and subscribed to before me, at my office in Tuscaloosa, December 12, 1839.

W. R. SMITH, J. P.

T. T. GAMMAGE.

I, Elijah Kirkpatrick, quartermaster of 5th division, Alabama militia, in the service of the United States, certify that the articles mentioned in the foregoing schedule were taken by me from Thomas T. Gammage for the use of the volunteers, under the

command of Major General William Irwin, and that the same were lost or consumed by the army.

G. KIRKPATRICK,
Quartermaster 5th division, Alabama militia.

I, William Irwin, major general 5th division, Alabama militia, certify that the articles in the foregoing schedule, were taken by my orders from Thomas T. Gammage, for the use and subsistence of the volunteers under my command and in the service of the United States; that the same were lost or consumed by the volunteers; that the valuation annexed to each item is just and reasonable, and that the said Thomas T. Gammage has not, to the best of my knowledge and belief, received any part or payment for the same, the 10th June, 1836, and that the troops were in service of the United States from 12th May to 12th June 1836.

WILLIAM IRWIN,
Com. 5th division, Alabama militia.

TREASURY DEPARTMENT,
Third Auditor's Office, January 1, 1841.

SIR: I have received your letter of the 30th ultimo, enclosing a schedule of articles, such as coffee pots, coffee mills, bakers, tin pans, materials for making tents, and for surgeons' use, blankets, stationery, rifles, shot guns, &c., amounting to \$994, and which, according to the certificates of E. Kirkpatrick, quartermaster, and William Irwin, major general of the 5th division of Alabama militia, were taken from Thomas T. Gammage, in May, 1836, by the order of General Irwin, for the use of the volunteers in the service of the United States, during the war with the Creek Indians.

Besides the schedule of articles above mentioned, your letter enclosed the petition of Mr. Gammage, and a letter addressed by the honorable D. Russell, chairman of the Committee of Claims, in the House of Representatives, to the Secretary of War, and in which he makes several inquiries in respect to the claim of Mr. Gammage, and among them, whether any payment was made for the articles charged for; and, in order that this inquiry may be satisfactorily answered, you have referred all the papers to this office. I have, accordingly, to state that the schedule, or account, of Mr. Gammage, transmitted by you, does not appear to have been paid through this office.

All the papers which accompanied your letter are herewith returned.

I am, very respectfully, your most obedient servant,
PETER HAGNER, *Auditor.*

Major General THOMAS S. JESUP,
Quartermaster General.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, January 7, 1841.

SIR: The claim of Thomas T. Gammage, for property said to have been taken by the volunteers of General Irwin's division, in 1836, referred by you to this office, with the letter of the honorable D. Russell, chairman of the Committee of Claims, was sent to the Third Auditor, on the 30th ultimo, to ascertain whether payment had been made for any of the articles taken. The auditor's reply is in the negative, and is herewith enclosed.

As to the inquiries of the committee, whether the property was taken, as stated, and what necessity existed for taking it, I can only say, as regards the first, that the fact is established by the affidavit of the claimant, the certificate of General Irwin, whose signature I recognize, and that of E. Kirkpatrick, the quartermaster of his division.

As to the necessity of taking the property, I have no information; but it is proper to remark, that the Creek Indians were then in open hostility. General Irwin's command was suddenly called out to check their hostile movements, and there was no depot of public supplies, in that part of the country, from which they could be furnished. I can readily imagine that the sieves were necessary to prepare corn meal for the subsistence of the troops; the lard, though not making part of the established ration, to be used in preparing their food, and as a substitute for meat; and the castings in place of the camp kettles, to which they were entitled. The rifles and shot guns were, no doubt, necessary, from the scarcity of arms among the men; the knives and forks, (articles never furnished to troops,) it seems, have been stricken from the bill. The other articles are such as have been frequently allowed in the settlement of claims for supplies to volunteers.

Evidence, I think, should be furnished, that all the articles were properly expended, or turned over to some accountable United States officer, at the termination of the service of General Irwin's command, or *unavoidably* lost, or destroyed, in the public service. But, whether Mr. Gammage should be the sufferer, from the neglect of the officers who took his property to account for the disposition of it, is a question which Congress alone can determine.

I return all the papers in the case, and have the honor to be, sir, your obedient servant,

TH. S. JESUP,
Quartermaster General.

In the foregoing report, the whole ground seems to be covered. I do not perceive that I could say more, were I to write a volume.

TH. S. JESUP.

The Hon. J. R. POINSETT,
Secretary of War.

TREASURY DEPARTMENT,
Second Comptroller's Office, June 14, 1848.

The property charged in the account of Thomas T. Gammage, not having been *purchased* for the use of the United States, but the same having been taken by military authority, or impressed, the accounting officers of the treasury have no power to admit the claim, unless specially authorised by act of Congress.

[See opinion of Attorney General, pages 1083, and 1264.]

ALBION K. PARRIS,
Comptroller.

TREASURY DEPARTMENT,
Second Auditor's Office, June 17, 1848.

I certify that the above is a true copy of the opinion in said case, on file in this office.

JNO. M. McCALLA,
Second Auditor.